

**Delmarva
Power**

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November 1, 1996

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VIA AIRBORNE EXPRESS

Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL


Re: Request for Clarification and Reconsideration
CC Docket No. 96-166

Dear Sir or Madam:

Enclosed please find an original and thirteen (13) copies of Delmarva Power & Light Company's Reply to the Opposition of the Association for Local Telecommunications Services in CC Docket No. 96-166.

Also enclosed is a stamped self-addressed envelope for return of a date-stamped copy of this filing to me.

Very truly yours,


Joanne M. Scanlon

Enclosures

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CS Docket No. 96-166

**Dale G. Stoodley
Joanne M. Scanlon
Delmarva Power & Light Company
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November 1, 1996

Under the statute and the Commission's regulations, utility is defined as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns

or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.” 47 U.S.C. § 224(a); 47 C.F.R. § 1.1402(a). In its Request for Clarification, Delmarva noted that this definition could be interpreted, in conjunction with the nondiscriminatory access provisions of Section 224(f)(1), to require a utility to allow a cable television system or a provider of telecommunications service to access a utility’s right-of-way, even if undeveloped, simply because the utility may own poles with wire communications attachments somewhere in the system. Delmarva requested that the Commission make clear that the definition of utility was not intended to require an electric utility to create an infrastructure by installing poles or conduits on bare or unimproved rights-of-way so that cable and telecommunications providers will have something to which they can attach their own equipment.


In its opposition to Delmarva’s petition, ALTS argues that Delmarva’s request “is, in effect a request that the Commission rewrite the statute.” Opposition at [2]-3. To the contrary, Delmarva is not suggesting that the Commission alter the statute. Delmarva simply sought clarification from the Commission regarding a defined term, which if interpreted broadly could require an electric utility to create infrastructure for the use of another entity where infrastructure does not exist, and for which the utility has no need.

Delmarva has more than 7,100 distribution poleline miles of overhead lines and has entered into numerous agreements which establish the terms and conditions under which cable television and telecommunications providers may attach equipment to Delmarva’s poles. These pole attachments make use of existing infrastructure. Delmarva sought clarification from the Commission that where such infrastructure does not exist on a utility’s right-of-way, the utility is not required to create such infrastructure for the benefit of a telecommunications or cable

provider. Delmarva reiterates its belief that such a result could not have been the intent of Congress.

Respectfully submitted,

DELMARVA POWER & LIGHT COMPANY

By: 
Dale G. Stoodley
Joanne M. Scanlon

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November 1, 1996

CERTIFICATE OF SERVICE

I, Joanne M. Scanlon, hereby certify that the foregoing Reply To The Opposition Of The Association For Local Telecommunications Services was served on November 1, 1996 on the following persons by U.S. mail, postage prepaid.


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